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FOR THE
PUBLICATION OF THE ANCIENT LAWS
AND INSTITUTES OF IRELAND.

REPORT.

Presented to both Houses of Parliament by Command of Her Majesty.



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Commission for the Publication of the Ancient Laws and Institutes
of Ireland.

REPORT.

TO HIS EXCELLENCY CHARLES STEWART, MARQUESS OF
LONDONDERRY,

LORD LIEUTENANT-GENERAL AND GENERAL GOVERNOR OF IRELAND.

December 22, 1886.

MAY IT PLEASE YOUR EXCELLENCY :

IN the year 1851, influenced by the testimonies of eminent scholars belonging to different countries, the Lords of the Treasury agreed to sanction the project of transcribing, translating, and publishing the existing remains of the Ancient Laws of Ireland, commonly called the Brehon Laws. It was known and stated at the time that this would be a difficult and laborious task, so difficult that most Celtic scholars had previously shrunk from the attempt, and so laborious that its execution would require the continued exertion of the persons employed in it for many years.

The first portion of the work to be performed was to copy the Brehon Law MSS. preserved in the British Museum, the Bodleian Library, and the Libraries of the Royal Irish Academy, and Trinity College, Dublin. This task was committed to the hands of Dr. O'Donovan and Professor O'Curry, whose fitness to perform it was universally admitted. There were, in fact, no other persons at the time who could have entered upon it with so fair a prospect of success. Most of the MSS. were ancient, and read with difficulty, on account of their imperfect state of preservation, the contractions used by the scribes, and the obscure nature of the technical language employed by the authors.

Trained originally under Captain Larcom and Dr. Petrie, in the collection of the topographical and historical information which it was intended to embody in the Ordnance Survey Memoir, and afterwards engaged to assist in the editing of the many important volumes published by the Archaeological and Celtic Societies of Ireland, these two men laid the scholars who have succeeded them under obligations which it is not easy to calculate. They possessed the advantages of an extensive acquaintance with ancient Irish literature; they were better able than any other scholars of their time to read the MSS. ; they had a knowledge of the vocabulary of the language in its archaic forms, as well as of the modern colloquial Irish, which imparted a life to their scholarship. In these qualifications they stood pre-eminent. If they were not versed in the studies of comparative jurisprudence and philology, they possessed special acquirements which fitted them to accomplish the task intrusted to them by the Commissioners. Their transcripts were executed in anastatic ink, by means of which facsimile copies to the number of twenty were printed off for the following purposes :—

1. To supply complete copies of all the works transcribed to some of the principal libraries in the United Kingdom and abroad.
2. To furnish the editors with accurate copies to be made use of in the successive stages of the work.
3. To form, by the dissection of a complete copy of the transcripts, an Index showing by an alphabetical arrangement where each paragraph of the Laws was to be found in the different texts; and thus to facilitate the work of collation.
4. To form a complete alphabetical Glossary, in which technical terms and words either obsolete or of doubtful meaning should be entered along with illustrative passages of the context. The Commissioners from the outset entertained the opinion that such a Glossary would be indispensable.

The work of copying the MSS. employed the transcribers for several years. The transcripts made by Dr. O'Donovan extended to nine volumes, comprising 2,491 pages in all; and those made by Professor O'Curry are contained in eight volumes extending to 2,906 pages. After the transcription of such of the Law Tracts as the Commissioners deemed it necessary to publish, a preliminary translation of almost all the transcripts was made either by Dr. O'Donovan or by Professor O'Curry, and some few portions were translated by them both. They did not, however, live to revise and complete their translations.

The preliminary translation executed by Dr. O'Donovan is contained in twelve volumes, and that executed by Professor O'Curry in thirteen volumes.

They were well aware of the difficulties of this part of their task. But they were conscious that whilst engaged in the work of transcription they had been gaining a considerable amount of knowledge of the whole subject, which placed them in a position much more advantageous than that which had been occupied by those who had previously attempted to deal with it. Nevertheless, they always regarded their translations as in some sense provisional, to be amended as their own knowledge, and that acquired by others, might furnish the means of correction. They were employed in producing an *editio princeps*, in the execution of which it would be irrational to expect an absolute exemption from errors.

Irish scholars and antiquaries had long been aware of the great difficulties which stood in the way of an adequate translation of the Ancient Laws. Mr. Charles O'Connor, in the last century, and Mr. O'Reilly in an essay published in 1824, described them as unintelligible to the ordinary Irish scholar, the former expressing his fear that the key to their meaning possessed "by the MacEgans in the reign of Charles I. had since then been lost; and Dr. Ledwich draws attention to O'Flaherty's failure to explain them, and to General Vallancey's distrust of his own translations. It was, therefore, no discredit to Dr. O'Donovan and Professor O'Curry that, in their preliminary translations, many words were left untranslated, and the sense of many of the passages remained obscure.

When the translation had so far progressed, the Commissioners employed W. Neilson Hancock, LL.D., formerly Professor of Jurisprudence in Queen's College, Belfast, to prepare the first part of the *Senchus Mor* for publication, in conjunction with Dr. O'Donovan. This remarkable Code of Laws was selected by the Commissioners for early publication, as being one of the oldest and one of the most valuable portions of the Ancient Laws of Ireland which have been preserved. It is regarded as exhibiting the modification which the laws of pagan origin underwent in the fifth century on the conversion of the Irish to Christianity, when, according to the universally received tradition, they were revised by St. Patrick, in conjunction with kings, bishops, and learned men.

The subject matter of the portions of the *Senchus Mor* contained in the first volume is the Law of Distress. It appears to have been the universal remedy by which rights were vindicated, and wrongs redressed.

From the text of the *Senchus Mor*, as settled by Dr. O'Donovan, the first volume was printed. A few sheets were read by him, in first and second proof, before his death, and the whole of the proofs was afterwards read and compared with his revised transcript by the Rev. Thaddeus O'Mahony, Professor of Irish in the University of Dublin, who was chosen by the Commissioners to assist Dr. Hancock in carrying on the work.

When the translation had been amended in manuscript, after consultation between Professor Hancock and Dr. O'Donovan, a portion was set up and revised on first and second proof by Dr. O'Donovan himself, but at the time of his death (Dec. 9, 1861), only a few sheets had reached this stage. The entire volume had, however, been amended in manuscript, as the result of his consideration of the suggestions made by Professor Hancock, and, though not all read in proof by him, it had the benefit of his latest views as to the interpretation and translation of the law terms.

After the death of Dr. O'Donovan the Commissioners proposed to submit the proof sheets to Professor O'Curry, in order to have the benefit of his suggestions also, but his sudden death (July 30, 1862), prevented this being carried out.

* One of the Law Tracts preserved in Trinity College commences with a statement that it was changed from hard original Gaelic, and put into *fad* Gaelic by Gilla-na-namh MacEgan, who died in 1309. The existence of such a tract proves that there were in the thirteenth and fourteenth centuries in the hands of the MacEgans, who were hereditary Brehons, ancient Law Tracts of such considerable antiquity that it was thought a work of importance to translate them into the ordinary Irish language of that period. The fact that such translations were used in the Law Schools of Ireland makes it unreasonable to argue, from the age of the language, or the absence of very ancient grammatical forms in any copy so treated, against the antiquity of the original text.

The first volume was published in 1864.

The second volume, prepared by Dr. Hancock, in conjunction with Professor O'Mahony, and published in 1869, contains the following sub-divisions of the *Senchus Mor* :—

1. The completion of the Law of Distress, commenced in the first volume.
2. The Law of Services of Hostage Sureties.
3. The Law of Fosterage.
4. The two Laws of Tenure.
5. The Law of Social Connexions.

To it are prefixed facsimile specimen pages of two of the MSS. used in constructing the Irish text.

Three of the MSS. used in the preparation of the Irish text of the *Senchus Mor* were originally in the possession of Edward Llwyd, and came into the hands of Sir John Sanbright, by whom, at the instance of Edmund Burke, they were presented to Trinity College, Dublin. It is interesting to trace in the present publication a fulfilment, after an interval of more than a hundred years, of the design of Edmund Burke, who suggested that the originals of the Irish Manuscripts, with a literal translation into Latin or English, should be published, that they might become the proper subjects of criticism and comparison.

Dr. Hancock being incapacitated by illness from taking any further part in the work, the Commissioners employed Dr. Richey, Deputy-Professor of Feudal and English Law in the University of Dublin, in conjunction with Professor O'Mahony, to edit the third volume, which was published in 1873. It contains :—

1. The last part, so far as it is extant, of the *Senchus Mor*, namely the *Corus Beccna*, wherein is found the law relative to the mutual rights in respect to property of members of the same community.
2. The *Book of Aicill*.

In preparing the text and translation for the press, they followed as nearly as possible the method previously employed, having had the advantage of all that had been done on the work by the eminent Irish scholars whose premature loss the lovers of Irish literature must always deplore. Dr. O'Donovan's translation of the *Book of Aicill*, revised after consultation with Professor O'Curry, was substantially followed, such alterations only being made as it may reasonably be inferred that Dr. O'Donovan would himself have made had he been spared to revise all the proofs.

To the third volume is prefixed a facsimile specimen page of the Trinity College, Dublin, MS., which was used as the basis of the text of the *Book of Aicill*.

The *Book of Aicill* supplies a complete collection of the Sentences traditionally ascribed to Cormac MacAirt, King of Ireland, (died A.D. 266), and Cennfaeladh, a man of learning who flourished in the middle of the seventh century. A collation of the MS. of this *Book*, to which access could not be obtained whilst it formed a part of the Stowe collection, will, it is hoped, lead to the completion and amendment of the text as constructed from the MSS. made use of by Dr. O'Donovan and Professor O'Curry.

The fourth volume, published in 1879, contains *Brehon Law Tracts* with the following titles :—

1. Of taking lawful possession (of land).
2. Judgments of co-tenancy (mode of partition of land held by joint tenants).
3. Bee judgments.
4. Right of water (to be used for mills).
5. Precincts (limits of, and compensation for violating them).
6. Of the judgment of every crime (culpability of persons).
7. The land is forfeited for crimes.
8. Divisions of land (valuation of land).
9. Of the divisions of the tribe of a territory.
10. The *Crith Gabhlach* (social ranks, and organization of the Irish tribe).
11. The sequel to the *Crith Gabhlach*.
12. Of succession (by descent and seniority).

These Tracts were selected for publication by Dr. Richey and Professor O'Mahony, who proceeded to prepare for the press the text and translation of the several documents. Professor O'Mahony having been unfortunately obliged to retire from all connexion with the editing of this volume, before he had completed the revision of the Irish text, Dr. Richey was indebted to the kindness of Mr. W. M. Hennessy for the correction of that portion of the original text which Professor O'Mahony had been unable finally to revise.

The explanatory notes appended to the text were selected by Professor O'Mahony, from those found in the MSS. of the original translators. Mr. O'Curry shortly before his death revised and corrected his previous translation of the *Crith Gabhlach*, making many important alterations and emendations. This revised version was intrusted to the editors, and on all occasions the later and more matured text of Mr. O'Curry's translation was followed.

Since the reconstitution of the Brehon Law Commission its members have not been inactive, though they have been unable to afford proofs of their diligence in the form of publications. Their first care, after the lamented death of the late editor, Dr. Richey, was to collect, arrange, catalogue and provide for the safe keeping of the documents belonging to the Commission. These are now in the custody of Robert Atkinson, LL.D., Professor of Sanscrit and Comparative Grammar and Lecturer on Celtic in the University of Dublin, to whom the Commissioners have intrusted the task of editing the remaining portion of the laws, and constructing the Glossary which is to be appended to them. In both these parts of his work he is making steady progress, carrying them on *pari passu*. The Commissioners have good hopes that he will be able to bring his whole task to a satisfactory conclusion, turning to account all the materials that have been accumulated by his predecessors, and profiting by the accessions to our knowledge of the Celtic languages which have been made in the last few years.

Injustice would be done to all who have been engaged in the arduous enterprise of editing the Brehon Laws, if allowance was not made for the fatalities by which its progress has been hindered. Dr. O'Donovan and Professor O'Curry were removed by death before they had put the last hand to their work upon the volumes in the preparation of which they were engaged; Dr. Richey was just able to see the last sheets of the fourth volume through the press before he contracted the illness under which he finally succumbed; Dr. Hancock, employed as Editor of the first and second volumes, and Professor O'Mahony, who took up the task left unfinished by Dr. O'Donovan and Professor O'Curry, were permanently incapacitated by illness of the most serious kind. Under such circumstances it was not to be expected that the volumes published would be proof against criticism; but the Commissioners expect that Dr. Atkinson, in collating the MSS. and constructing the contemplated Glossary, will have opportunities for correcting errors and supplying omissions, which cannot but be regarded as blemishes, though they do not materially detract from the historical and legal value of the work.

Such errors and omissions have not hindered eminent scholars in our own and other countries from gathering important results, illustrative of the history and social condition of the ancient Celts, from our four published volumes. On the other hand, if an attempt had been made to attain the greatest conceivable accuracy in the transcription and translation of the documents, the lives of Dr. O'Donovan and Professor O'Curry would have terminated long before they had contributed, from their extensive stores of knowledge, all that they were better able than any of their contemporaries to supply.

The portion of the work still to be executed under the superintendence of the Commissioners, though some parts of it will be found difficult and laborious, is small in comparison with what has been already accomplished, and can be successfully dealt with by an Editor having the qualifications possessed by Professor Atkinson, and helped by a knowledge of all that is contained in the published volumes. This remaining portion may be divided under the following heads:—

- a. The translation of some Tracts and Fragments left untranslated by Dr. O'Donovan and Professor O'Curry.
- b. The revision and printing of some portions of the transcript and translation not included in the four volumes already published.
- c. The collation of the whole of the Irish Text. In performing this task it would be necessary for the Editor to visit the British Museum and the Bodleian Library.
- d. The preparation of an Alphabetical Glossary of technical words. This is absolutely necessary for the understanding of the Laws, and will furnish a valuable contribution to Celtic philology. The precedent set in the publication of the Anglo-Saxon and Welsh Laws justifies the conclusion arrived at by the Commissioners. The preparation of the Glossary will involve considerable labour, and it can only be completed after the printing of the whole of the text.
- e. For the purpose of reference, Indexes of names of persons and places, and of subjects. The necessity of these is obvious.

The Commissioners have reason to believe that the cost of editing these two volumes, including the expense of the collation, will not exceed £700. The Lords of the Treasury have already signified their willingness to appropriate £200 towards the publication of the fifth volume, leaving open the question of further expenditure. The Commissioners hope that the estimate and plan of proceeding which they now submit will receive the approval of the Treasury. The contemplated outlay will suffice to complete the original design, and the expenditure, owing to the difficulty of the task imposed upon the Editor, will probably be distributed over three years. Professor Atkinson has very earnestly expressed his desire that the two remaining volumes may be issued to the public simultaneously. The Commissioners are of opinion that his wish should be complied with, in order that injustice may not be done to his efforts by premature criticism. They also believe that it would be expedient to allow the Collation, the Glossary, and the Indexes to accompany the issue of the concluding part of the Text.

We have the honour to remain,

Your-Excellency's obedient humble servants,

(Signed,)

ASHBOURNE, C.

C. LIMFRICK.

A. M. PORTER, *M.R.*

WILLIAM O'BRIEN.

✠ JOHN HEALY, D.D., LL.D.,
Coadjutor Bishop of Clonfert.

JOHN O'HAGAN.

JOHN K. INGRAM.

APPENDIX.

Names of the first Brehon Law Commissioners :—

The Rt. Hon. F. BLACKBURNE, Lord Chancellor of Ireland.

The Rt. Hon. WILLIAM, Earl of Rosse.

The Rt. Hon. EDWIN RICHARD WYNDHAM, Earl of Dufferin and Mount-Eden.

The Rt. Hon. THOMAS, Lord Monteagle of Brandon.

The Rt. Hon. JAMES, Lord Talbot de Malahide.

The Rt. Hon. DAVID RICHARD PIGOT, Lord Chief Baron.

The Rt. Hon. JOSEPH NAPIER, Attorney-General for Ireland.

The Rev. THOMAS ROMNEY ROBINSON, D.D.

The Rev. JAMES HENTHORNE TODD, D.D.

The Rev. CHARLES GRAVES, D.D.

GEORGE PETRIE, LL.D.

Major THOMAS ADKINSON LARCOM.

Names of the Brehon Law Commissioners, as reconstituted in the year 1883:—

Rt. Hon. Sir EDWARD SULLIVAN, Lord Chancellor of Ireland.

The Rt. Rev. CHARLES GRAVES, Bishop of Limerick.

The Rt. Hon. A. M. PORTER, Master of the Rolls.

The Hon. Mr. Justice O'BRIEN.

Sir SAMUEL FERGUSON, Q.C., LL.D., Deputy Keeper of the Records.

Names of the present Brehon Law Commissioners:—

The Rt. Hon. Lord ASHBORNE, Lord Chancellor of Ireland.

The Rt. Rev. CHARLES GRAVES, Bishop of Limerick.

The Rt. Hon. A. M. PORTER, Master of the Rolls.

The Hon. Mr. Justice O'BRIEN.

The Most Rev. J. HEALY, Coadjutor Bishop of Clonfert.

The Hon. Mr. Justice O'HAGAN.

JOHN KELS INGRAM, LL.D., S.F.T.C.D.